

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>RON TOUSIGNANT</b>	)	
Claimant	)	
	)	
VS.	)	
	)	
<b>HEMBREE WELL SERVICE INC.</b>	)	
Respondent	)	Docket No. 270,734
	)	
AND	)	
	)	
<b>PETROSURANCE CASUALTY CO.</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant requests review of a preliminary hearing Order entered by Administrative Law Judge Pamela J. Fuller on February 11, 2002.

**ISSUES**

The Administrative Law Judge denied claimant's request for medical and temporary total disability benefits. Claimant requested this review and contends the Judge denied his request based upon an adverse finding of whether the alleged injury arose out of and in the course of the employee's employment. Respondent admits claimant met with personal injury by accident on March 22, 2001, and such accident arose out of and in the course of his employment with respondent. However, respondent's defense may be characterized as based on causation and not compensability; that is, respondent denies claimant's present complaints are due to his work-related accident. Because compensability is not at issue, respondent further argues the Board does not have jurisdiction to review the decision denying medical and temporary total disability benefits.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

The claimant was employed as a derrick floor hand for respondent. On March 22, 2001, claimant was injured when the wellhead imploded. The Scott County Hospital records contain a history that claimant was thrown against the side of the hole and then ran into the "dog house" hitting his right shoulder. Claimant complained of pain and numbness in the right ear radiating down into the neck, right shoulder and arm. X-rays of the cervical spine and right shoulder were negative. Claimant was diagnosed with right shoulder strain.

After the incident claimant was off work for two or three days and then returned to his regular job duties without any restrictions or accommodations. Claimant did not request any additional medical treatment. Claimant attended a company picnic at the lake on August 4, 2001, and water-skied and played badminton all evening. On September 5, 6, and 7, 2001, claimant moved from an apartment to a house.

On September 10, 2001, claimant complained to respondent that his shoulder and neck were hurting. Claimant saw his personal physician, Mikhail Y. Imseis, M.D., on September 21, 2001, complaining of neck pain. The medical record does not contain any reference to the March 22, 2001, incident or any other reference to work.

Claimant was examined on November 5, 2001, by Jonathan Loewen, M.D. upon referral by claimant's attorney. Claimant gave the doctor a history of being thrown some distance in an explosion at work on March 22, 2001. Claimant described significant neck pain and numbness and tingling into his left shoulder and arm. Dr. Loewen noted claimant upon his return to work was having difficulty because of his neck, shoulder and arm pain. Dr. Loewen diagnosed post-traumatic neck pain and strain with radiculopathy and referred pain into the left shoulder and left arm. Dr. Loewen opined the cause was secondary to claimant's injury on March 22, 2001.

The Order in this matter issued by the Administrative Law Judge states: "That claimant's request for temporary total disability compensation, medical treatment, medical mileage, medical bills, prescription reimbursement is hereby denied." No further explanation is provided.

K.S.A. 44-551 provides that the Board shall not review a pending preliminary hearing Order entered by the Administrative Law Judge unless it is alleged the Administrative Law Judge exceeded her jurisdiction in granting or denying the requested relief. K.S.A. 44-534a allows appeals from preliminary hearings with regard to the following disputed issues which are considered jurisdictional and subject to review by the Board:

- (1) Whether the employee suffered an accidental injury;
- (2) Whether the injury arose out of and in the course of the employee's employment;

- (3) Whether notice is given or claim timely made;
- (4) Whether certain defenses apply.

The issue is whether claimant's current need for medical treatment for his neck is due to the accidental injury that arose out of and in the course of claimant's employment with respondent. This issue is considered jurisdictional and is subject to review by the Board on an appeal from a preliminary hearing Order.<sup>1</sup>

In the instant case, the Administrative Law Judge denied claimant's request for medical treatment. The Order does not specify the reason for this denial. There is, however, sufficient evidence in the file to support a finding that claimant failed to prove his current need for medical treatment resulted from the March 22, 2001, accident. The Board finds the evidence does not support a finding that claimant's current need for medical treatment stems from the March 22, 2001, injury and, thus, did not arise out of and in the course of his employment with respondent.

It is significant claimant was diagnosed with right shoulder strain after the March 22, 2001, incident and then returned to his regular job duties a few days later. It was not until September 21, 2001, that claimant sought treatment with his personal physician for neck pain. The medical records of that visit and subsequent visits do not mention any work related incidents. In the interim between the March 22, 2001, accident and the September 21, 2001, doctor's appointment, claimant engaged in his normal job duties and engaged in physical activities at a company picnic. During this entire five and one-half months claimant neither sought nor requested medical treatment. The facts do not support claimant's assertion that his current problems are related to the March 22, 2001, incident.

Claimant argues the uncontradicted medical testimony of Dr. Loewen establishes his current problems are related to the March 22, 2001, work-related accident. Initially, it should be noted that the contemporaneous medical records contradict Dr. Loewen's findings. As previously noted, the hospital records indicate claimant was complaining of right ear, neck, shoulder and arm pain. Dr. Loewen's findings were on the left. In addition, claimant's personal physician's records contain no mention of any work-related connection to the neck pain. Lastly, the history given to Dr. Loewen is contrary to the facts established by the contemporaneous medical records and claimant's activities during the months after the March 22, 2001, incident.

Based upon the evidentiary record compiled to date, the Board concludes the claimant has failed to establish that his current problems are due to the work-related accident on March 22, 2001.

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<sup>1</sup>K.S.A. 44-534a(a)(2) and K.S.A. 44-551(b)(1).

**AWARD**

**WHEREFORE**, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Pamela J. Fuller dated February 11, 2002, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of March 2002.

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BOARD MEMBER

c:     Joni J. Franklin, Attorney for Claimant  
       Kirby Vernon, Attorney for Respondent  
       Pamela J. Fuller, Administrative Law Judge  
       Philip S. Harness, Workers Compensation Director